

ALBERT A. CUSHING, JR.

IBLA 77-90

Decided May 29, 1979

Appeal from a decision of the Alaska State Office, Bureau of Land Management, denying a motion for equitable adjudication of Native allotment application AA 8193.

Dismissed.

1. Patents of Public Lands: Effect

The effect of the issuance of a patent, even if issued by mistake or inadvertence, is to transfer the legal title from the United States, and to remove from the jurisdiction of this Department the consideration of all disputed questions concerning rights to the land.

APPEARANCES: Bruce C. Twomley, Esq., Alaska Legal Services Corporation, Anchorage, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

By decision of December 8, 1972, the Alaska State Office, Bureau of Land Management (BLM), rejected Native allotment application AA 8193 of Albert A. Cushing, Jr., for the E 1/2 E 1/2 sec. 24, T. 18 N., R. 3 W., Seward meridian, because the subject land had been segregated from settlement and occupancy during the entire period of Cushing's alleged use and occupancy. No appeal was taken from this decision, and BLM closed the case.

Thereafter, on October 19, 1976, Alaska Legal Services Corporation, on behalf of Cushing, filed a motion for equitable adjudication pursuant to 43 CFR 1871.1-1. Therein, counsel cites Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976), for the proposition that all Alaska Natives whose allotment applications had been rejected are entitled to a hearing. The motion for equitable adjudication was denied by BLM in a decision dated November 12, 1976. This appeal followed.

We have been informed by BLM that Patent No. 50-77-0134 was issued to Glenn Matthew Frink on September 16, 1977, for the E 1/2 E 1/2 sec. 24, T. 18 N., R. 3 W., of the Seward meridian. This is the land which Cushing sought for his allotment.

[1] The controlling circumstance in this case is that a land patent has been issued to Glenn Matthew Frink for the land described in the allotment application. The effect of the issuance of a land patent, even by mistake or inadvertence, is to transfer the legal title from the United States and to remove from the jurisdiction of this Department the inquiry into the disputed questions concerning rights to the land. Fernie M. Rogers, 29 IBLA 192 (1977); Basille Jackson, 21 IBLA 54 (1975); Everett Elvin Tibbets, 61 I.D. 397 (1954).

For these reasons we decline to consider the merits of the arguments presented by appellant. Since a land patent has issued, the arguments are not properly the subjects of further determination by this Board. We therefore return the case record to the Bureau of Land Management. Appellant, if he so desires, may take the matter up with the Office of the Solicitor, the Department's office in charge of litigation matters, with a view to urging that office to seek to have proceedings instituted looking to the cancellation of that patent, if grounds therefor exist. Fernie M. Rogers, *supra*; Ethel Aguilar, 15 IBLA 30 (1974); Clarence March, 3 IBLA 261 (1971).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

Douglas E. Henriques
Administrative Judge

I concur:

Joseph W. Goss
Administrative Judge

ADMINISTRATIVE JUDGE FISHMAN CONCURRING IN THE RESULT:

The main opinion affirms the Alaska State Office's denial of equitable adjudication sought by appellant. So far as I have been able to ascertain, the grant or denial of equitable adjudication is a matter committed initially to the Director, Bureau of Land Management. 43 CFR 1871.1-1. Consequently, action on the petition by the State Office was error. However, this Board is authorized to exercise such authority and in that context the result reached in the main opinion is correct. There is nothing in the petition for equitable adjudication which conceivably could trigger the application of that doctrine to the case at bar. The existence of the patent constitutes a "lawful adverse claim" within the purview of 43 CFR 1871.1-1. See 43 U.S.C. § 1162 (1976), and United States v. Russell G. Wells, 78 I.D. 163, 166 (1971).

Frederick Fishman
Administrative Judge.

